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SHUMAKER & SIEFFERT, P. A. 8425 SEASONS PARKWAY SUITE 105 ST. PAUL, MN 55125			MOONEYHAM, JANICE A	
			ART UNIT	PAPER NUMBER
			3629	

DATE MAILED: 09/23/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/504,159

Applicant(s)

VAIDYANATHAN ET AL.

Examiner

Janice A. Mooneyham

Art Unit

3629

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 July 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-17, 20-22, 25-31, 64-73, 93-100 and 108-117 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) 1-17, 20-22, 25-31, 64-73, 93-100 and 108-117 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

1. This is in response to the applicant's reply brief filed on July 7, 2005. Claims 1-17, 20-22, 25-31, 64-73, 93-100, and 108-117 are currently pending in this application.

Reopening of Prosecution - New Ground of Rejection After Appeal or Examiner's Rebuttal of Reply Brief

2. In view of the reply brief filed on July 7, 2005, PROSECUTION IS HEREBY REOPENED. A new ground of rejection is set forth below.

To avoid abandonment of the application, appellant must exercise one of the following two options:

- (1) file a reply under 37 CFR 1.111 (if this Office action is non-final) or a reply under 37 CFR 1.113 (if this Office action is final); or,
- (2) request reinstatement of the appeal.

If reinstatement of the appeal is requested, such request must be accompanied by a supplemental appeal brief, but no new amendments, affidavits (37 CFR 1.130, 1.131 or 1.132) or other evidence are permitted. See 37 CFR 1.193(b)(2).

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Art Unit: 3629

3. Claims 111 and 115 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

In claims 111 and 115 the applicant claims *wherein the online dispute resolution system and the marketplace have separate database, automatically electronically communicating transaction data between the database of the online dispute resolution system and the database of the electronic marketplace; wherein the online dispute resolution system comprises a data manager software application to automatically communicate data between the database of the online dispute resolution system and the database of the electronic marketplace.*

The Examiner is unable to find support for the italicized portions of the claim language in the original disclosure. Therefore, the Examiner request that the applicant specifically direct the Examiner to the portions of the specification where there is support for this claim language.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Art Unit: 3629

4. Claims 1-17, 20-22, 25-27, 64-73, 93-99, 100,109, 110-113, and 115 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sloo (US 5,895, 450) (hereinafter referred to as Sloo) in view of Collins et al. (US 2002/0007362) (herein referred to as Collins).

Referring to Claim 1:

Sloo discloses a method and a system for resolving a commerce dispute involving one or more parties (*a complaint handling apparatus (Figure 1)*) for resolving *complaints related to goods, class of goods, services, and/or venders, the subjects of the complaints may be manufacturers, distributors, wholesalers, retailers or any other responsible persons or entities* (col. 3, lines 1-8) *with a plurality of access terminals* (col. 3, lines 8-11), comprising:

electronically providing access to an online dispute resolution system to allow at least one of the parties to initiate a filing of the dispute from a marketplace (Figs. 1-6, col. 2, line 53 thru col. 3, line 7 - *the complaint handling apparatus 10 broadly includes a central computer 12 and a plurality of access terminals coupled with the central computer by a communication network 16*; (col. 3, lines 8-39) (electronically providing access to an online dispute system); *the access terminals receive complaints and responses from the users* (col. 3, lines 18-20) (to allow one of the parties to initiate a filing of a dispute); *the users of the apparatus who file complaints may include individuals, businesses, organizations or other entities and the complaints may relate to goods, classes of goods, services, and/or vendors, individuals, organizations or any object, the subject of the complaint may be individuals, manufacturers, distributors,*

Art Unit: 3629

wholesalers, retailers) (col. 3, lines 1-8) (wherein the dispute may be filed from a marketplace) (*retailer, wholesaler, complaints relating goods and services*; col. 17, line 66 thru col. 18, line 16 *consumer complaint module*);

electronically receiving with the online dispute resolution system transaction data from the marketplace, wherein the transaction data describes transactions within the marketplace (the Examiner interprets "electronically receiving data" to include data entered manually and transmitted through a communication network - Figs. 3-9; col. 2, lines 7-20 - *receiving complaints and responses over the communication network* (col. 3, lines 18-20) (electronically receiving with the online dispute resolution system transaction data (*responses*), *the users of the apparatus who file complaints may include individuals, businesses, organizations or other entities and the complaints may relate to goods, classes of goods, services, and/or vendors, individuals, organizations or any object, the subject of the complaint may be individuals, manufacturers, distributors, wholesalers, retailers* (from a marketplace) wherein *the apparatus receives complaints, notifies the subject of the complaints, receives responses from the subject* (transaction data from the marketplace), *stores the complaints and associated responses in individual data records* (col. 2, lines 56-59); see also, col. 2, lines 56-59; see Figure (500) and discussion as to Figure 5 (column 5, line 66 through column 6, line 14 and col. 6, lines 55-60) – *this portion of the program permits a subject to respond to a complaint issued against it. The subject may respond to the complaint by entering information in one of the access terminals and e-mailing or transmitting the information to the central computer by way of the communication network*) (*responses to the*

Art Unit: 3629

complaints are received – see Figure 5 (500). (The Examiner is interpreting a response to a complaint from a retailer via the complaint handling apparatus as transaction data being received from the marketplace. Electronically receiving transaction data would include data entered manually into a computer and would include any communication over the network);

receiving from at least one of the parties information (complaint) related to the dispute (col. 2, lines 53-65; col. 3, lines 19-29 the access terminals 14 receive complaints and responses from the user, deliver them to the central computer 12 (column 2, lines 56-57, column 3, lines 19-29); and

executing software with the online dispute resolution system (artificial intelligence (e.g. neural network linking)) to apply an online dispute resolution process that utilizes at least a portion of the transaction data and the information to assist the parties in resolving the dispute (col. 3, lines 8-67 - each access terminal includes conventional memory and software for communicating with and interpreting the data sent from the central computer (col. 3, lines 8-67); col. 1, line 66 thru col. 2, line 6 the central computer is programmed to receive complaints and responses, store the complaints and responses in individual data records, and negotiate settlements to the complaints; col. 2, lines 12-20 and Figure 9 - the central computer is programmed to monitor and rate the conduct and performance of both the complainants and the subjects; the ratings can be used to affect the outcome of the disputes and hold the parties accountable for their conduct; col. 9, line 40 through col. 10, line 39 when the program uses artificial intelligent techniques to make a decision regarding a dispute, it considers the

Art Unit: 3629

performance records of all participants to the dispute when rendering a judgment; the program evaluates all of the gathered information to arrive at a judgment; the program may compare the characteristics from the current data record with the characteristics from the data records for the previously resolved complaints to arrive at an appropriate judgment; col. 10, lines 58-61 by monitoring participant behavior in certain situations and outcomes over time the program may compare the current situation with other similar situations having known outcomes and predict the outcome for the present situation based on known outcomes. Artificial intelligence techniques may be used to predict an outcome based on what it has learned about behavior, situations and their outcomes. Thus, the program may suggest the best behavior to a user).

Although Sloo discloses that the complaints may relate to goods, classes of goods, services, and/or the vendors (col. 3, lines 2-7) and transaction data (col. 9, lines 57-63), Sloo does not disclose that the marketplace is an electronic marketplace or that the process utilizes at least a portion of the transaction data from the marketplace in resolving the dispute.

However, Collins discloses an electronic marketplace ([0039] *a customer may have a dispute with a merchant. The dispute may arise in connection with a transaction occurring over the Internet*) and that the process utilizes at least a portion of the transaction data from the marketplace in resolving the dispute ([0042] *each party sends position data over the network to central server 120; the relational database associates the data from each party to components in the database to form the ZOPA (zone of possible agreement) template*).

Art Unit: 3629

It would have been obvious to one of ordinary skill in the art at the time of the invention to combine the electronic marketplace and marketplace data with the complaint handling method and system of Sloo so as to facilitate agreements in disputes involving transactions occurring over the Internet between a merchant and a consumer.

Referring to Claim 112:

Sloo discloses a system that electronically receives transaction data from a marketplace Figs. 3-9; col. 2, lines 7-20 - *receiving complaints and responses over the communication network* (col. 3, lines 18-20) (electronically receiving with the online dispute resolution system transaction data (*responses*), *the users of the apparatus who file complaints may include individuals, businesses, organizations or other entities and the complaints may relate to goods, classes of goods, services, and/or vendors, individuals, organizations or any object, the subject of the complaint may be individuals, manufacturers, distributors, wholesalers, retailers* (from a marketplace) wherein *the apparatus receives complaints, notifies the subject of the complaints, receives responses from the subject* (transaction data from the marketplace), *stores the complaints and associated responses in individual data records* (col. 2, lines 56-59); see also, col. 2, lines 56-59; see Figure (500) and discussion as to Figure 5 (column 5, line 66 through column 6, line 14 and col. 6, lines 55-60) – *this portion of the program permits a subject to respond to a complaint issued against it. The subject may respond to the complaint by entering information in one of the access terminals and e-mailing or*

Art Unit: 3629

transmitting the information to the central computer by way of the communication network) (responses to the complaints are received – see Figure 5 (500). (the Examiner is interpreting that a response to a complaint from a retailer via the complaint handling apparatus as transaction data being received from the market place.

Electronically receiving transaction data would include data entered manually into a computer and would include any communication over the network);

wherein the system executes software that utilizes the transaction data and applies a dispute resolution process (col. 3, lines 8-67 - *each access terminal includes conventional memory and software for communicating with and interpreting the data sent from the central computer* (col. 3, lines 8-67); col. 1, line 66 thru col. 2, line 6 *the central computer is programmed to receive complaints and responses, store the complaints and responses in individual data records, and negotiate settlements to the complaints*; col. 2, lines 12-20 and Figure 9 - *the central computer is programmed to monitor and rate the conduct and performance of both the complainants and the subjects; the ratings can be used to affect the outcome of the disputes and hold the parties accountable for their conduct*; col. 9, line 40 through col. 10, line 39 *when the program uses artificial intelligent techniques to make a decision regarding a dispute, it considers the performance records of all participants to the dispute when rendering a judgment; the program evaluates all of the gathered information to arrive at a judgment; the program may compare the characteristics from the current data record with the characteristics from the data records for the previously resolved complaints to arrive at an appropriate judgment*; col. 10, lines 58-61 *by monitoring participant behavior in*

Art Unit: 3629

certain situations and outcomes over time the program may compare the current situation with other similar situations having known outcomes and predict the outcome for the present situation based on known outcomes. Artificial intelligence techniques may be used to predict an outcome based on what it has learned about behavior, situations and their outcomes. Thus, the program may suggest the best behavior to a user)

wherein the system electronically provides status data based on the participation of the parties (col. 2, lines 7-12 *the central computer is programmed to provide public access to the data records to permit viewing of the corresponding complaints, responses, and settlements for allowing other users to gauge the conduct of the subject;* col. 6, lines 24-32 *the monitoring information is stored in the subject's performance record and used to rate the subject's conduct; Figure 9 Monitor Compliance (900); update performance records (908);* col. 11, line 44 thru col. 12, line 14).

Although Sloo discloses that the complaints may relate to goods, classes of goods, services, and/or the vendors (col. 3, lines 2-7) and transaction data (col. 9, lines 57-63), Sloo does not disclose that the marketplace is an electronic marketplace or that the process utilizes at least a portion of the transaction data from the marketplace in resolving the dispute.

However, Collins discloses an electronic marketplace ([0039] *a customer may have a dispute with a merchant. The dispute may arise in connection with a transaction occurring over the Internet*) and that the process utilizes at least a portion of the transaction data from the marketplace in resolving the dispute ([0042] *each party sends*

Art Unit: 3629

position data over the network to central server 120; the relational database associates the data from each party to components in the database to form the ZOPA template).

It would have been obvious to one of ordinary skill in the art at the time of the invention to combine the electronic marketplace and marketplace data with the complaint handling method and system of Sloo so as to facilitate agreements in disputes involving transactions occurring over the Internet between a merchant and a consumer.

The language defining the marketplace as a web-based community having buyers and sellers of goods and services is an attempt to define a system by a characteristic rather than by its specific structure. Collins identifies a system for facilitating agreement between a customer and a merchant wherein the transaction may have occurred over the Internet ([0039]). Therefore, the Examiner has reason to believe that the systems of Collins and Sloo would be capable of resolving disputes over a marketplace defined as a web-based community having buyers and sellers of goods and services.

The type of data being transmitted is considered to be non-functional descriptive data not interrelated with the useful structure of the system and thus will not serve as a limitation. This descriptive material will not distinguish the claimed invention from the prior art in terms of patentability, see *In re Gulack*, 703 F. 2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983); *In re Lowry*, 32 F. 3d 1579, 32 USPQ 2d 1031 (Fed. Cir. 1994).

Furthermore, the recited statement of intended use of the system, to assist the buyers or sellers in resolving disputes relating to the transactions, does not patentably distinguish the claimed invention.

Referring to Claim 2 and 64:

Sloo discloses a method and system for complaint handling (*resolving disputes*; *page 2 lines 54-56*) over a complaint handling apparatus which includes a computer (Figure 1 and page 3, lines 8-30) wherein there are at least two modes (Figure 7), the first mode requiring the online dispute resolution process to be driven by an electronic agent (col. 7, lines 29-40 *Automatic Negotiator which allows the apparatus to determine a resolution to the dispute* and a second mode involving a human dispute resolution specialist (Judge/Jury Figure 7 (712)) (the system comprising a database (*col. 3, lines 8-17; col. 20, lines 25-26 storing means for storing*) and server that receives information and compares the information (col. 20, lines 57-58 *comparing means for comparing said data*) comprising automatically selecting one of two modes of resolving the dispute (Figure 7), the first mode requiring the online dispute resolution process being driven by an electronic agent to assist the parties in resolving the dispute (Automatic Negotiator (Figure 7 (702) and the second mode involving a human dispute resolution specialist (Figure 7 (712) Judge/Jury).

Referring to Claim 3:

Sloo discloses a method wherein the case-based reasoning system contains a history file (*Fig. 2 (206-216), col. 1, line 66 thru col. 6 data records; col. 9, lines 32-48 when the program uses artificial intelligent techniques to make a decision regarding a dispute, it considers the performance records of all participants to the dispute when rendering a judgment*).

Referring to Claim 4:

Sloo discloses a method and system wherein the history file contains patterns and precedents, further comprising applying the patterns and precedents to generate an outcome prediction (col. 10, line 54 thru col. 11, line 2 - *By monitoring participant behavior in certain situations and outcomes (complaint activity or measurable satisfaction levels) over time, the program may compare the current situation with other similar situations having known outcomes and predict the outcome for the present situation based on these known outcomes. Artificial intelligence techniques may be used to predict an outcome based on what it has learned about behavior, situations and their outcomes. Thus, the program may suggest the best behavior to the user to reduce the number of complaints by providing guidelines for appropriate behavior before a dispute arises*).

Referring to Claim 5:

Sloo discloses a method further comprising presenting the outcome prediction to the parties to assist the parties in selecting the mode of resolving the dispute (col. 10, line 54 thru col. 11, line 2, col. 11, lines 21-36 the program then retrieves data records from previously resolved complaints in step 804 to evaluate the information entered in step 802 to arrive at a proposed solution to the current question or dispute. For example, the program may compare the characteristics from the current question or dispute with the characteristics from the data records for the previously resolved complaints to arrive at an appropriate solution. Over time, the apparatus and program will accumulate a large number of data records that can be used to accurately predict a solution for almost any type of complaint or dispute. The program then transmits or allows the user to view the proposed solution in step 806, col. 14, lines 33-44, Fig. 2).

Referring to Claim 6:

Sloo discloses a method wherein the outcome prediction includes one or more likely outcomes and associated probabilities of occurrence (col. 10, line 54 thru col. 11, line 2, col. 11, lines 21-36, col. 12, line 47 thru col. 13, line 23).

Referring to Claim 7:

Sloo discloses a method further comprising receiving settlement position from the parties (col. 2, lines 53-65, col. 4, lines 63-65 the program preferably prompts the

Art Unit: 3629

user or complainant to enter a detailed complaint, the action the user requests to resolve the complaint or dispute, col. 7, line 66 thru col. 8, line 4 the program may allow the complainant to establish a settlement).

Referring to Claim 8:

Sloo discloses a method system further comprising automatically settling the dispute if the settlement positions satisfy a predetermined criteria (Automatic Negotiator – col. 10, lines 35-39).

Referring to Claim 9:

Sloo discloses a method wherein the predetermined criteria relates to a monetary settlement position (*col. 7, line 66 thru col. 8, line 4 settlement (possibly a monetary value or a contract condition)*).

Referring to Claim 10:

Sloo discloses a method wherein the predetermined criteria relates to non-monetary settlement position (*col. 7, line 66 thru col. 8, line 4 contract condition*).

Referring to Claim 11:

Collins discloses the dispute resolution specialist resolves the dispute by transitioning from mediation stage to an arbitration stage (Figures 8a-8c; [0009] *if the*

Art Unit: 3629

mediation session does not produce an agreement, an arbiter is provided with the transcript).

Referring to Claim 12:

Sloo discloses a method wherein the dispute resolution specialist generates a final recommended resolution (Fig. 7 (720) receive and store judgment; col. 8, lines 5-49 – *issue their judgment*).

Referring to Claim 13:

Sloo discloses a method wherein the final recommended resolution is accepted by the one or more parties (col. 9, lines 50-52, col. 11, lines 37-42 a judgment was rendered that required the subject to reimburse the complainant for damaged merchandise and the subject filed to comply (implies an acceptance of the reimbursement).

Referring to Claim 14:

Collins discloses creating a contract between the one or more parties stating a willingness to abide by the recommended resolution (Figures 7a-7b).

Referring to Claim 15:

Sloo discloses a method further comprising communication among the parties using a plurality of communication modes (Fig. 2, communication network, col. 3, lines

Art Unit: 3629

31-39 *local area network, wide area network, wireless network, voice network*; col. 6, lines 55-67 *mail or fax*).

Referring to Claim 16:

Sloo discloses a method wherein the communication modes include a public messaging mode and a private messaging mode (Figs. 2, 7, col. 2, lines 7-9 *central computer is programmed to provide public access to data record*; col. 3, lines 30-38 *the private communications transmitted over the communication network may be encrypted or otherwise protected using available technology*).

Referring to 17:

Sloo discloses a method wherein the communication mode is selected by the dispute resolution specialist (col. 4, lines 1-8 and 45-60; col. 6, lines 55-64; col. 4, line 61 thru col. 5, line 2). It is inherent that the mode of communication can be selected by the system or the users which would include the dispute resolution specialist.

Referring to Claims 20-21:

Sloo discloses a method further comprising providing visual cues when applying the dispute resolution process to automatically highlight agreements between the parties (col. 13, lines 5-40 *apparatus may create warnings or bulletins on objects based on what it knows about the participants*; col. 13, line 59 thru col. 14, line 16).

Referring to Claim 22:

Sloo discloses a method further comprising storing status data on participation of the parties in the dispute resolution process (col. 2, lines 7-20, col. 6, lines 24-32 *the program may monitor how long it takes the subject to respond to the notification. This monitoring information is stored in the subject's performance record*; col. 8, lines 50-58 *program updates both the complainant's and subject's performance record*, col. 10, lines 54-64; col. 11, lines 37-43 Monitor Compliance; col. 17, line 66 thru col. 18, line 15).

Referring to Claim 25:

Sloo discloses a method wherein the data relates to compliance of a participant to a result of the resolution of the dispute (col. 2, lines 7-20, col. 10, lines 53-64; col. 11, line 38 thru col. 12, line 14 Monitor Compliance).

Referring to Claim 26:

Sloo discloses a method further comprising communicating the status data from the dispute resolution system to the marketplace and highlighting an offender based on the status information (col. 11, lines 38 thru col. 12, line 5 *judgment rendered that required the subject to reimburse the complainant for damaged merchandise and the subject failed to comply; if program determines one of the parties in fact failed to comply with a term or condition of a judgment, it updates the appropriate data record to indicate*

Art Unit: 3629

the compliance failure and posts the information in the public record; col. 12, line 47 thru col. 13, line 24, col. 17, line 66 thru col. 18, line 14).

Referring to Claim 27:

Sloo discloses a method further comprising providing a system for assigning the dispute resolution specialist to a particular dispute (*col. 8, lines 5-19 the program then selects the judge or jury from a list of pre-qualified persons; preferably, these pre-qualified persons are categorized by criteria*).

Referring to Claim 72:

Sloo discloses a method further comprising determining a current mode of resolving the dispute; and automatically selecting a communication mode based on the determination (*col. 6, lines 55-68; col. 10, line 54 thru col. 11, line 36*).

Referring to Claim 73:

Sloo discloses a method further comprising providing the data to the parties to assist the resolution dispute (*col. 4, line 61 thru col. 5, line 2 program prompts user to enter his or her complaint; the program prompts user or complainant to enter a detailed complaint, the action the user requests to resolve the complaint or dispute, an abbreviated description of the complaint; col. 10, line 54 thru col. 11, line 5; col. 11, lines 27-36 the program may suggest the best behavior to the user; the program allows the user to view the proposed solution*).

Referring to Claim 100:

Sloo discloses a method further comprising maintaining a database that stores facts and outcome of previously resolved electronic commerce disputes (data records) (col. 2, lines 7-20; col. 5, lines 3-10, and 56-65; col. 15, lines 46-58), and wherein executing software apply a case-based reasoning system (col. 3, lines 8-30 and 45-53) comprises:

searching the database to identify previously resolved disputes with facts that are similar to the case information (col. 4, lines 14-17, col. 10, lines 13-22 col. 10, line 54 thru col. 11, line 2 *the program compares the current situation with other similar situations having known outcomes*);

identifying at least one likely outcome of the dispute based on the outcomes of the identified previously resolved disputes (col. 10, line 54 thru col. 11, line 5 *predicts the outcome of the present situation based on the known outcome*); and

presenting the identified likely outcomes to the parties as a potential resolution to the dispute to assist the parties in negotiating a resolution to the dispute (col. 10, line 54 thru col. 11, line 5, col. 11, lines 27-36 *predicts the outcome of the present situation based on the known outcome; suggest the best behavior to the user*).

Referring to Claim 109:

Sloo discloses a method further comprising applying a case-based reasoning system to the information to produce a result for use in selection of a mode of resolving the dispute in accordance with an online dispute resolution process (col. 11, lines 21-36

Art Unit: 3629

over time the apparatus and program will accumulate a large number of data records and can be used to accurately predict a solution for almost any type of complaint or dispute; the program transmits or allows the user to view proposed solution; col. 14, lines 32-44).

Referring to Claim 65:

Sloo discloses a system wherein the server searches the database to identify previously resolved disputes with facts that are similar to the case information (col. 2, lines 7-20, lines 53-65, col. 4, lines 9-17, col. 10, lines 58-66; col. 10, line 54 thru col. 11, line 35 *the program compares the current situation with other similar situations having known outcomes*).

Referring to Claim 66:

Sloo discloses a system wherein the server presents the result of the comparison by presenting the outcomes of identified previously resolved disputes (col. 10, line 58 thru col. 11, line 35 *predicts the outcome of the present situation based on the known outcome; suggest the best behavior to the user; program transmits or allows the user to view the proposed solution*).

Referring to Claim 67:

Sloo discloses a system wherein the server summarizes the outcome of identified previously resolved disputes (col. 1, line 66 thru col. 2, line 12 *complaints and*

Art Unit: 3629

responses are stored in individual data records; settlements and judgments are stored along with their respective complaints and responses in the data record; col. 10, line 58 thru col. 11, line 36; col. 14, lines 45-60).

Referring to Claim 68:

Sloo discloses a system wherein the server presents the result of the comparison by generating an outcome prediction as a function of the facts and outcomes of the identified disputes, and presenting the outcome prediction to the parties (col. 10, line 54 thru col. 11, line 36 *the program compares the current situation with other similar situations having known outcomes and predicts the outcome of the present situation; program transmits or allows the user to view the proposed solution*, col. 12, line 47 thru col. 13, line 23).

Referring to Claim 69:

Sloo discloses a system wherein the outcome prediction includes at least one likely outcome (col. 10, line 54 thru col. 11, line 2, col. 11, lines 21-36, col. 12, line 47 thru col. 13, line 23).

Referring to Claim 70:

Sloo discloses a system wherein the outcome prediction includes associated probabilities of occurrence of the at least one likely outcome (col. 10, lines 13- 34 *the program may employ artificial intelligence processing with neural networks, fuzzy logic*

Art Unit: 3629

and/or genetic algorithms to analyze various scenarios using the gathered information; program may render further decisions based on collected data in a way that will most likely result in positive effects on society; col. 10, line 54 thru col. 11, line 36, col. 12, line 47 thru col. 13, line 23).

Referring to Claim 71:

Sloo discloses a system wherein the server presents the at least one likely outcome to the parties as a potential resolution of the dispute (col. 10, line 54 thru col. 11, line 36 *program then transmits or allows the user to view the proposed solution; col. 12, line 47 thru col. 13, line 23, col. 14, lines 33-34).*

Referring to Claim 93:

Collins discloses automatically select a resolution mode comprising one of (i) a direct negotiation mode that allows the parties to directly negotiate a resolution to the dispute via the computer network (Figure 8a (820), 8b (820)) , (ii) a conciliation mode that allows the parties to negotiate the resolution to the dispute through a mediator (Figure 8a (830) 8b (830)), and (iii) mediation mode that allows a mediator to propose a resolution to the dispute ([0045] *the second and third levels involve interaction with a live third party for resolving the conflict).*

Referring to Claim 94:

Sloo discloses a system wherein the server provides a preprogrammed recommended resolution to at least one of the parties based on the comparison (col. 2, lines 53-65, col. 10 line 54 thru col. 11, line 35, Automatic Decision Maker).

Referring to Claim 95:

Sloo discloses a system wherein the server:

performs an analysis of the dispute and presents pre-programmed recommended resolutions based on the analysis in the first mode (col. 10, line 54 thru col. 11, line 35 *the program compares the current situation with other similar situations having known outcomes; program then transmits or allows the user to view the proposed solution*);

performs a match of needs of the two parties as defined by the dispute to resolve the dispute in a second mode (col. 4, lines 14-17 *the program uses the information entered to search the memory of the central computer to find a subject or subjects that match the search data*);

providing a medium for the parties to independently resolve the dispute in a third mode (col. 4, lines 19-37, col. 5, line 66 thru col. 6, line 32; col. 6, line 55 thru col. 7, line 26 *the subject may respond to the complaint by entering information in one of the access terminals*); and

assigns a dispute resolution specialist to resolve the dispute in a fourth mode (col. 8, lines 5-18 *program selects a judge or a jury*).

Art Unit: 3629

Referring to Claim 96:

Collins discloses a system wherein the server provides a message exchange by which the dispute resolution specialist interacts with the parties to reach a recommended resolution (Figure 8a –8c; [0009] and [0045] *interaction with a live third party for resolving conflict*).

Referring to Claim 97:

Sloo further discloses a system wherein the server automatically assigns the dispute resolution specialists (col. 8, lines 5-20 *program selects a judge or a jury*).

Referring to Claim 98:

Sloo discloses a system further comprising a software program executing on the server to automatically assemble the case information from records provided by the parties, wherein the software module presents sample resolutions to the parties to aid the parties in resolving the case and presents the case information in a form that identifies areas of agreement between the parties (Fig. 1, col. 10, line 54 thru col. col. 11, line 36 *program may suggest the best behavior to the user to reduce the number of complaints by providing guidelines for appropriate behavior before a dispute arises*).

Referring to Claim 99:

Sloo discloses a system further comprising:

Art Unit: 3629

a software program operating the server to assemble the case information from records provided by the parties (col. 1, line 66 thru col. 2, line 6; col. 3, lines 18-29; col. 4, line 59 thru col. 5, line 2); and

a software program operating on the server to assist a dispute resolution specialist in identifying similar cases from a historical database of past cases (col. 8, lines 5-18; col. 9, lines 32-48; col. 12, lines 25-45).

Referring to Claims 110 and 113:

Collins discloses electronically receiving with the online dispute resolution system enrollment requests from the marketplace and automatically initiating enrollment of sellers or buyers in response to the request ([0046-0047].

Referring to Claims 111 and 115:

Collins discloses a method and system with an online dispute resolution system (Figure 1a ZOPA database (140)) and marketplace ([0039] *customer may have a dispute with a merchant regarding a transaction occurring over the Internet*), the method and system further comprising:

automatically electronically communicating the transaction data between the database on the online dispute resolution system and the electronic marketplace ([0039] and [0042].

Art Unit: 3629

while Collins discloses the online dispute resolution system having a database (Figure 1a ZOPA database (140)) neither Collins nor Sloo explicitly disclose a marketplace database.

However, it would have been obvious to one of ordinary skill in the art at the time of the invention to incorporate into the complaint handling systems of Sloo and Collins a marketplace with a database so as to provide the marketplace with maintain transaction data concerning customers and transaction.

NOTE: Applicant is directed a recent CAFC decision, *Collegenet, Inc. v. Applyyourself, Inc.* (CAFC, 04-1202-1222, 1251, 8/2/2005) wherein the court held that “automatically” means “without human interaction, but may be human initiated or interrupted.” Therefore, a process may be automatic even though a human initiates it.

5. Claim 108 is rejected under 35 U.S.C. 103(a) as being unpatentable over Sloo in view of Slaikeu (US Patent 2001/0007106).

Referring to Claim 108:

Sloo discloses intervention by pre-qualified persons (judge/jury)(col. 8, lines 5-18)

Sloo does not a method further comprising:

training a dispute resolution specialist by requiring the dispute resolution specialist to experience transactions within online marketplaces including at least an auction site;

Art Unit: 3629

outputting simulated online dispute resolution cases to the dispute resolution specialists via the computer network to assess the skill of the dispute resolution specialists; and

assigning online disputes to the dispute resolution specialists only upon completion of the training and successful resolution of the simulated online dispute resolution cases.

However, Slaikeu discloses a method comprising training a dispute resolution specialist (page 3 [0025- 0026]).

Furthermore, the Examiner takes Official Notice that online training is old and well known and has become an established business practice as is exemplified by online CLE classes online graduate classes and testing. Furthermore, providing simulations of situations is also an old and well known way to train.

Claims 28-31, 114, and 116-117 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sloo and Collins as applied to claim 1 above, and further in view of www.truste.com (retrieved from the Internet Archive Wayback Machine) (hereinafter referred to as TRUSTe).

Referring to Claim 28:

Neither Sloo nor Collins disclose the dispute resolution is provided as an insurance covering a transaction.

Art Unit: 3629

However, TRUSTe disclose the dispute resolution is provided as an insurance covering a transaction (page 10 the TRUSTe program is backed by a multi-faceted assurance process that establishes Web site credibility, thereby making users more comfortable when making online purchases or providing information; page 19 the Watchdog page to provide you with a convenient mechanism for reporting violations; page 25; page 34 Resolution Process; page 50, Watchdog dispute resolution form – if you have an unresolved dispute with a TRUSTe member).

It would have been obvious to one of ordinary skill in the art at the time of the invention to combine the assurance/insurance of TRUSTe with the complaint handling of Sloo and Collins to build users' trust and confidence in transacting over the Internet and to provide a convenient mechanism for reporting violations and resolving disputes.

Referring to Claim 29:

TRUSTe discloses sellers associated with the marketplace being registered subscribers of the system before transactions are insured (*page 14 in joining the TRUSTe online seal program, you leading the way; the trustmark is awarded only to sites that adhere to our established privacy principles and agree to comply with ongoing TRUSTe oversight and **our resolution process**; page 21 Watchdog (File a Complaint); pages 32 – 34*)

Art Unit: 3629

Referring to Claim 30:

TRUSTe discloses communicating membership data from the online dispute resolution to the marketplace (page 32-34 member directory); and

automatically showing a visual indicia within the marketplace to indicate the availability of the dispute resolution system and the membership of buyers or sellers in the dispute resolution process (pages 14 TRUSTe "trustmark," an online branded seal; 19 and 23 Our "Seal of Trust" and Assurance Process; the site agrees to display the trustmark)

Referring to Claim 31:

TRUSTe discloses where the visual indicia is a medallion that is a visible symbol of trust to increase the confidence of the buyers or the sellers in executing transactions within the marketplace (pages 12-14, page 23)

Referring to Claim 114:

TRUSTe discloses a membership database that maintains status data for the parties (page 32 the official TRUSTe member directory)

Referring to Claims 116 and 117:

Collins discloses a system wherein the dispute resolution system and the marketplace are implemented at least in part as software executing on a computer

Art Unit: 3629

system having data storage devices and wherein the dispute resolution system and the marketplace communicate via the computer system ([0039] and [0042]).

Response to Amendment

The declaration under 37 CFR 1.132 filed June 13, 2003 is insufficient to overcome the rejection of claims 30 and 31 based upon the new grounds of rejection.

Upon review of the record it is determined that the previous Examiner did fail to make a written record of consideration of the 132 declaration. However, since the previous Examiner last examined the application, the Appellant has filed a Request for Continued Examination and Appellant's submission filed on April 12, 2004 has been entered. The April 12, 2004 response made no mention of the 132 declaration in the Remarks. Furthermore, since the June 13, 2003 date of the submission of the declaration, the Appellant has made considerable amendments to claims 30 and 31. Thus, the declaration would not be relevant to the claim language that is now on appeal.

Moreover, upon reviewing the declarations under 37 CFR 1.132 it is determined that the declarations are insufficient to overcome the rejection of claims 30 and 31 based upon Sloo and Collins in view of Truste because:

The declarant, Stephen Abernathy, is the CEO of the assignee and thus any declaration by this person would be considered to be biased since the declarant would have a financial interest in the grant of a patent on this invention.

Art Unit: 3629

The first seven pages of the declaration appear to be merely opinion evidence and unsupported or uncorroborated allegations.

The Appellant has failed to link the alleged commercial success to the subject matter in the claimed language.

The Appellant has failed to provide any evidence as to the allegation of long felt need. There is no evidence that a problem existed in the art for a long period of time and that the claimed invention solved the problem

The Appellant has failed to provide any objective evidence supporting patentability of the invention.

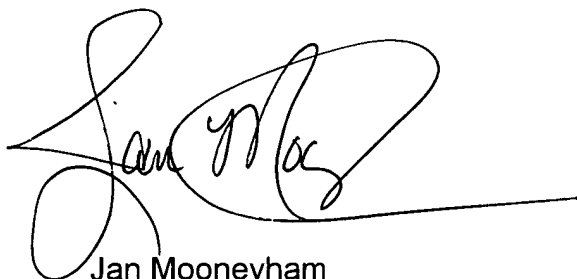
It is unclear to the Examiner what the declaration of Ethan Katsh is trying to establish or what the Appellant is relying on the declaration to prove.

Art Unit: 3629

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Janice A. Mooneyham whose telephone number is (571) 272-6805. The examiner can normally be reached on Monday through Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Weiss can be reached on (571) 272-6812. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read "Jan Mooneyham", with a long horizontal line extending to the right.

Jan Mooneyham
Patent Examiner
Art Unit 3629